BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JEANNINE R. WALLACE	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 150,490
HERITAGE VILLAGE	)	& 150,491
Respondent	)	
AND	)	
	)	
SELF INSURED	)	
Insurance Carrier	)	

ORDER

Claimant appeals from Awards entered by Special Administrative Law Judge William F. Morrissey, dated February 2, 1994. The Appeals Board heard oral argument on May 5, 1994.

APPEARANCES

Claimant appeared by her attorney, Vincent L. Bogart of Wichita, Kansas. The respondent and its insurance carrier appeared by its attorney, Lyndon W. Vix of Wichita, Kansas.

RECORD

The Appeals Board has reviewed and considered the record listed in the February 2, 1994 Awards.

STIPULATIONS

The Appeals Board adopts the stipulations listed in the February 2, 1994 Awards.

ISSUES

This appeal involves two separately docketed claims. The first, Docket No. 150,490, involves injury to claimant's knee. On this claim, claimant requests review of the determination regarding nature and extent of the disability. The second claim, Docket No. 150,491, relates to a June 1990 injury to claimant's neck and shoulder. On the second claim, the claimant asks the Appeals Board to review findings relating to:

(1) Nature and extent of disability;

(2) Whether claimant is entitled to vocational rehabilitation and related temporary total disability benefits;

(3) Whether claimant is entitled to additional medical care;

(4) Whether claimant is entitled to additional temporary total disability benefits for an additional period of total disability; and,

(5) Whether claimant is entitled to be reimbursed for mileage expense for trips to see Dr. Weigand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

DOCKET NO. 150,490

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant should be awarded benefits based upon a ten percent (10%) permanent partial impairment of the right lower extremity for the injury to her right knee in March or April 1990.

Claimant began experiencing problems with her right knee while carrying trays in the dining room of respondent Heritage Village. She was treated initially at Medical Emergency Center. She was also seen by Dr. Eyster. Dr. Eyster gave an injection to her knee, prescribed a brace and recommended she modify the mechanics of her lifting. Claimant returned to work but continued to experience problems with her knee.

The only evaluation of disability in claimant's knee is that given by Dr. Schlachter. He noted claimant complains of swelling when she walks less than one mile. Kneeling and squatting cause pain, and the knee occasionally gives way. He diagnosed chondromalacia and rated her disability at ten percent (10%) of the right lower extremity. Dr. Schlachter also testified that five percent (5%) of the ten percent (10%) impairment rating was attributable to walking claimant did as part of an exercise program in an attempt to lose weight. The Appeals Board finds that the walking did not constitute a separate accident. Any additional disability was a natural and probable consequence of the initial injury to her knee.

Accordingly, the Appeals Board finds that claimant should be entitled to the full ten percent (10%) permanent partial impairment of the right lower extremity.

The Special Administrative Law Judge also denied future medical care for the knee injury. He did so because he found the walking constituted an intervening accident. The Appeals Board finds, consistent with the finding that the aggravation by walking was a natural and probable consequence of the initial injury, that claimant be granted future medical benefits for the knee injury upon application only.

DOCKET NO. 150,491

After reviewing the record and considering the arguments, the Appeals Board finds:

(1) Claimant suffered a ten percent (10%) permanent partial impairment to the body as a whole as a result of injury to her shoulder on June 6, 1990.

The evidence indicates claimant injured her right shoulder on June 6, 1990, when she tripped and fell into a chair while helping transfer a patient from a bed to a chair. She was seen at the Minor Emergency Center and continued to work on light duty until September 1990 when she was off work because of injury to her child. When she attempted to return to work in October 1990, respondent would not re-hire her. She was subsequently seen by a number of physicians and opinions regarding the nature and extent of her disability were given by three physicians.

Dr. Schlachter saw claimant on November 21, 1991. He diagnosed chronic sprain to the right shoulder. His examination was essentially normal. He recommended, however, that she not lift over thirty-five (35) pounds. This restriction was based upon her complaint that her shoulder bothered her when she lifted her child. He rated her permanent partial impairment at three percent (3%) of the body as a whole.

Dr. Weigand, claimant's family physician, did not see the claimant for her shoulder injury until September 1992. He also diagnosed chronic upper back sprain and right shoulder pain. He suggested she be limited to sedentary work and that she should not lift more than thirty to thirty-five (30-35) pounds. He rated her permanent partial impairment at twenty percent (20%) of the body as a whole.

Dr. Lesko saw claimant October 31, 1990, and treated her on numerous occasions thereafter. He released her to return to her regular duties in August 1991. At that time, he recommended restrictions for two (2) weeks and thereafter no limits. He also rated her permanent partial impairment as three percent (3%) of the body as a whole.

Based upon the above summarized evidence, the Special Administrative Law Judge found claimant had not established by a preponderance of the credible evidence that she

could not return to her same employment. Accordingly, the Special Administrative Law Judge limited claimant's award to an award for functional impairment only. The Appeals Board agrees. The medical records do not reflect significant objective findings. Dr. Lesko, the treating physician, convincingly testifies that claimant should not have restrictions and could return to the same type of work she was performing at the time of her injury at the same wage. Since claimant was able to earn comparable wage, her award should be limited to disability based upon functional impairment only. K.S.A. 44-510e.

On review of the depositions and reports from the various physicians, the Appeals Board finds, as did the Special Administrative Law Judge, that the functional impairment ratings of Doctors Schlachter and Lesko understate claimant's functional impairment. The Appeals Board believes, however, that the rating giving by Dr. Weigand of twenty percent (20%) of the body as a whole significantly overstates the impairment. The Appeals Board finds that ten percent (10%) does more accurately reflect the functional impairment and the award should be based upon a ten percent (10%) general disability.

(2) The Appeals Board finds that because claimant is able to return to work at a comparable wage she is not entitled to an award of vocational rehabilitation benefits at the respondent's expense.

At the Preliminary Hearing held June 18, 1992, the Administrative Law Judge took under advisement claimant's request for vocational rehabilitation benefits. The case was subsequently submitted for final award and then transferred to a Special Administrative Law Judge for review and decision. The Special Administrative Law Judge did not address claimant's request for vocational rehabilitation benefits. However, in accordance with K.S.A. 1988 Supp. 44-510g, an employee is entitled to such benefits if the employee is not able to return to work with the same employer at a comparable wage. Having found claimant is able to do so in this case, the request for vocational rehabilitation benefits is denied.

(3) The Appeals Board agrees that future medical expenses should be awarded upon application only. Nothing in the record suggests an immediate or ongoing need for medical care. A need for additional care may arise at some time in the future.

(4) Claimant is not entitled to additional temporary total disability benefits. Claimant asserts that she should be entitled to temporary total disability benefits from the date of accident until the date of award, less a certain portion of that time during which she did work. The Appeals Board finds, however, that claimant has been paid temporary total disability benefits adequate to cover the period of temporary total disability. Although the record does not reflect the exact dates covered by the payments, the record does indicate the parties did stipulate the claimant was paid 78.43 weeks of temporary total disability benefits. The record also indicates the claimant was released to return to work by Dr. Lesko on August 6, 1991, with restrictions for two (2) weeks and thereafter no limitations. Both the date of her release to return to work with restrictions and the date of her release

without restrictions are less than 78.43 weeks, the number of weeks temporary total disability benefits were paid from the date of accident. Respondent has not argued that they have overpaid temporary total disability benefits and the Appeals Board finds that the award should be for the 78.43 weeks already paid.

(5) Claimant is not entitled to reimbursement for medical mileage expense.

Claimant requests reimbursement of mileage expense for trips to see Dr. Weigand. However, the record indicates Dr. Weigand was not an authorized treating physician and, accordingly, respondent was and is not obligated to reimburse mileage for trips to see Dr. Weigand. Although K.S.A. 1988 Supp. 44-510, the statute authorizing requirement of medical mileage, does not refer specifically to authorized treatment, the statute does refer back to the reasonably necessary care that is the employer's obligation to provide. The Appeals Board finds the Legislature's intention was that such mileage be paid only for unauthorized treatment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Awards of Special Administrative Law Judge William F. Morrissey, dated February 2, 1994, are hereby modified as follows:

DOCKET NO. 150,490

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR OF THE claimant, Jeannine R. Wallace, and against the respondent, Heritage Village, a self-insured, for an accidental injury which occurred on March 3, 1990, and based on an average weekly wage of $298.04, for 20 weeks of compensation at the rate of $198.70 per week in the sum of $3,974.00 for a 10% permanent partial impairment of function of the right leg making a total award of $3974.00.

As of February 2, 1994, all compensation is past due and ordered paid in one lump sum.

Claimant must file application for approval of future medical care unless the parties agree on the furnishing of such care.

Unauthorized medical expense of up to $350.00 is ordered paid to claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey	
Special Administrative Law Judge	$150.00
Barber & Associates	
Transcript of Motion Hearing	$105.80
Transcript of Preliminary Hearing of 9/10/92	147.00
Transcript of Regular Hearing	265.50
Deposition of Holly L. Rivers	198.40
Deposition of Paul D. Lesko, M.D.	227.70
Deposition of Joel T. Weigand, M.D.	225.20
Deposition of Ernest R. Schlachter of 2/24/93	170.80
Deposition of Jerry D. Hardin	261.60
Ireland Court Reporting	
Deposition of Ernest R. Schlachter of 10/15/92	$136.80
Deposition of Michael H. Feekin	287.90
Deposition Services	
Transcript of Preliminary Hearing of 1/26/93	$108.05

DOCKET NO. 150,491

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR OF THE claimant, Jeannine R. Wallace, and against the respondent, Heritage Village, a self-insured, for an accidental injury which occurred on June 6, 1990, and based upon an average weekly wage of $298.04, for 78.43 weeks of temporary total disability compensation at the rate of $198.70 per week in the sum of $15,584.04, and 336.57 weeks at the rate of $19.87 in the sum of $6,687.65 for a 10% permanent partial general disability, making a total award of $22,271.69.

As of January 20, 1995, there is due and owing claimant 78.43 weeks of temporary total disability compensation at the rate of $198.70 per week in the sum of $15,584.04, and 163 weeks of permanent partial general disability compensation at the rate of $19.87 per week in the sum of $3,238.81, making a total due and owing of $18,822.85 ordered paid in one lump sum less any amounts previously paid. The remaining balance of $3,448.84 is to be paid for 173.57 weeks at the rate of $19.87 per week until fully paid or further order of the Director.

Claimant must file an application for approval of future medical care unless the parties agree on the furnishing of such care.

Unauthorized medical expense of up to $350.00 is ordered paid to claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed to the respondent to be paid direct as stated in the above Docket No. 150,490 Award.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Vincent L. Bogart, Wichita, KS
Lyndon W. Vix, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director